IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.
WRIT PETITION NO. 1097 OF 2004
WITH
WRIT PETITION NOS.1160/04 & 1762 OF 2003

W. P. NO.1097/04 :
Hindoostan Crown Mills Siddhivinayak Kamgar
Karmachari Sangharsha Sanghatana & Anr. ...Petitioners.
Vs.
Hindoostan Spg. And Wvg. Mills Ltd. & Ors. ...Respondents.
W.P. NO.1160/04 :
M/s.Hindoostan Spg.& Wvg.Mills Ltd.& Ors. ...Petitioners.
Vs.
Hindoostan Crown Mills S.K.K.S.Sanghatana & Anr...Respondents.
....
Mr.N. M. Ganguli with Ms.K. G. Poojari for the Petitioners & for Respondnet No.1 in W.P. 1160/04.
Mr.Iqbal Chagla, Senior Advocate with Mr. J.P. Cama, Senior Advocate and Mr.S. H. Mehta i/b. Federal & Rashmikant for Respondent No.1 & for the Petitioner in W.P. 1160/04.
Mr. N.D. Buch with Ms. Dholakia for Respondent No.2.
Mr.Sia Dixit for Respondent Nos.3 and 4.
.....
W. P. NO.1762/2003:
M/s.Hindustan Spinning & Wvg. Mills Ltd.&Anr. ...Petitioners.
Vs.
Rashtriya Mill Mazdoor Sangh & Ors. ...Respondents.
....
Mr.Iqbal Chagla, Senior Advocate with Mr. J.P. Cama, Senior Advocate and Mr.S. H. Mehta i/b. Federal & Rashmikant for the Petitioners.
Mr. N.D. Buch with Ms. Dholakia for Respondent No.1.
Mr.N. M. Ganguli with Ms.K. G. Poojari for Respondent No.2.
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CORAM : DR.D.Y.CHANDRACHUD, J.

February 21, 2005.

JUDGMENT:

I

Hindoostan Spinning and Weaving Mills Ltd. moved two applications before the Commissioner of Labour on 10th April 2003 to seek permission to close down two of its industrial establishments: (i) The Crown Mills Division situated at Gokhale Road, Prabhadevi, Mumbai and (ii) The Process House Unit at Yadav Patil Lane, Veer Savarkar Marg, Prabhadevi, Mumbai. The Commissioner of Labour granted permission, the result whereof would be to render 597 workmen destitute of work and, destitute of a gainful source of employment. An application for review of this order under Section 25-O(5) of the Industrial Disputes Act, 1947, was filed by the Siddhivinayak Kamgar Karmachari Sangharsha Sanghatana of Crown Mills and the Process House Unit. On 15th July 2003, the Commissioner of Labour made a reference to adjudication. That reference has culminated in an award of the Industrial Tribunal dated 21st February 2004 confirming the closure permission subject to (i) closure compensation being paid within 30

days of the publication of the award; (ii) a direction that the workmen would be paid either the closure compensation under Section 25-O or the payment due under an agreement arrived at with the Rashtriya Mill Mazdoor Sangh for offering Voluntary Retirement on 29th December 2002, whichever is more beneficial, within 30 days; and (iii) The payment to those employees who had opted for voluntary retirement, of the moneys due and payable under the agreement dated 29th December 2002 within 30 days. The Court has two proceedings – W. P. 1097 of 2004 by the Union and W. P. 1762 of 2003 by the management. The management is aggrieved by the conditions which the award imposes, while the Union is in a fundamental sense aggrieved by the grant of closure permission. When these Writ Petitions came up for hearing, there was an agreement between Learned Counsel before the Court from all sides that both in the interests of enabling the parties to understand their own positions with certainty and having regard to the seminal issues that are involved, it would be in the interests of justice that the petitions be disposed of finally at the stage of admission. Pleadings have been completed and the matters have

been heard, with the consent of Counsel, for hearing and final disposal at the stage of admission. Rule is accordingly issued and the petitions are, by consent taken up for hearing and final disposal, the Counsel having waived service.

II

2. The history of the City of Mumbai is in a significant manner interlinked with the fortunes of textile mills which dot its landscape. Land prices increased over the last few decades, perhaps beyond the wildest expectations of the enterprenuers who set up these enterprises in the century before Independence. The lands where the Mills are situated provide a fertile avenue for commercial exploitation. The Industrial Units, or at least such of them as survive the vicissitudes of time, provide gainful employment to thousands of industrial workers. Upon the fate of these workers rest the hopes and aspirations of thousands of families whom they support here in Mumbai and in rural Maharashtra. In a fundamental sense, the social fabric of an industrial society based in middle class neighbourhoods of

metropolitan Mumbai, depends upon the outcome of proceedings such as the one here, under Section 25-O. Bereft of a source of gainful employment upon the closure of industrial establishments which are the source of their earnings, industrial workers are confronted with destitution and marginalization. The role of the Court is undoubtedly to interpret and apply the legal principles governing its jurisdiction under Section 25-O. The jurisdiction of the High Court is in a sense structured by restraints which we observe while discharging our obligations under Article 226 of the Constitution. Equally, and this is necessary as a prefatory comment, the jurisdiction under Article 226 is a jurisdiction in aid of justice. In an era of globalization, Courts are conscious as they must be, of the needs of industry in a competitive business environment. The Court as an expounder of constitutional precept cannot, however, lose sight of the fundamentals underlying our social order based as they are on the Directive Principles of State Policy under the Constitution and the social ethos underlying statutory provisions such as Section 25-O. So long as Section 25-O remains a part, and I may add a vibrant part, of the statute book,

the Court must discharge its solemn duty of enquiring as to whether genuine and adequate grounds for closure have been made out. More so, in a case such as the present, where industrial history spanning over a hundred years is sought to be substituted by the exigencies of real estate development raising fundamental questions of existence for 600 workmen and their families.

III

3. The First Respondent is a business house of some antiquity belonging to the Thackersey family. The business activities were initially commenced in 1805 as a trader and were then expanded to cover the manufacture of cotton fabrics. The First Respondent was incorporated in 1882 or thereabouts as a Limited Company. The Crown Spinning and Manufacturing Company Ltd,. which had also been incorporated in 1880, was amalgamated with the First Respondent with effect from 1st April 1975 by an order passed by this Court on 23rd July 1976 in the exercise of its Company jurisdiction. After amalgamation, the First Respondent did have four manufacturing Units in Mumbai, two

units – Units 'A' and 'B' – at Jacob Circle, Mahalaxmi, the Processing House Division at Prabhadevi and the Crown Mills Division at Dadar. There was a general strike in the cotton textile Industry in the City of Mumbai in 1982 which substantially eroded the position of the industry. The First Respondent overcame the adverse effects of the textile strike by 1989 and between the years 1989-90 until 1997-98, a dividend of 20% was generally speaking declared by the Company. In addition to the issuance of bonus shares, the shareholders are alleged to have received a dividend of Rs.1054/- lakhs. In 1989-90, the First Respondent altered the object clause in its Memorandum of Association so as to include inter alia, the carrying on of Real Estate business. Sometime in the year 1995-96, the First Respondent set up a textile unit at Karad. In March 2002, the First Respondent is stated to have closed down two units at Mahalaxmi. Since the workers, it is alleged, were persuaded to accept voluntary retirement, no permission of the State Government under Section 25-O was sought for the closure of the two units at Mahalaxmi. The Company, it is alleged, stopped

giving work to the workers in the Crown Mills and Process House Divisions and wages were paid irregularly after October 2002. According to the management, the net worth of the Company was eroded on 31st March 2001 and the Company became a sick industrial undertaking under the Sick Industrial Companies (Special Provision) Act, 1985. The BIFR registered the Company's reference on 29th August 2001. On 4th December 2002, the BIFR declared the Company as a sick industrial undertaking and directed the operating agency to formulate a scheme for the rehabilitation of the Company.

4. On 29th December 2002, VRS agreements were entered into by the Company with Rashtriya Mill Mazdoor Sangh (RMMS) – the recognised Union - in respect of Crown Mills and the Process House Division. The VRS agreements inter alia brought within their coverage, employees who had not completed 60 years of age as on the date of the submission of the application for voluntary retirement and who were on the muster rolls of the Company. Clause 2 of the agreement lays down the compensation that was

payable and clause 3, the schedule of payment. The Company agreed to issue post-dated cheques but clause 3(g) laid down that in the event that the Company was unable to raise funds as visualized therein, due to unavoidable circumstances, after relieving the employees, the Company in consultation with RMMS would inform both RMMS and the employees individually, not to deposit the cheques in their Bank Accounts. In such cases, the employees would be paid interest at a rate 1% higher than what is payable by nationalized Banks for fixed deposits, on the delayed part of payment. The employees, it was provided, will not take recourse to any legal proceedings. Clause 4(k) of VRS Agreement is material for the present purposes, for it provided that employees who will not opt for voluntary retirement, would be redeployed by the Company, if necessary, by re-organizing and restructuring manufacturing activities in any of the Industrial Units of the Company. Clause 4(k) inter alia provided as follows :

> "The remaining employees who will not opt for voluntary retirement under the Scheme will be redeployed and assigned work in any section, department or units of the Company without adversely affecting their service conditions. The employees and RMMS shall fully co-operate with the Company in the implementation of the

> Scheme and re-organizing and restructuring of its manufacturing activities in any of the Units, as per the requirement of the Company. The employees shall accept the work assigned to them and attend to it in the normal and peaceful manner and give the expected production every working day as per decision of the Company. Wherever required the employees will be given necessary training by the Company. After implementing the VRS the reorganization will be done in consultation with the RMMS."

The Company, it was recorded, would be at liberty to dispose of excess or redundant plant and machinery including land and building for the purpose of raising funds for implementation of the Voluntary Retirement Scheme and for reorganizing and rationalizing its manufacturing activities in a more economic and viable manner. Immediately after the VRS agreements came to be signed, the Company by its letter dated 30th December 2002 furnished a schedule of payment to RMMS. The schedule of payment provided that the payment on account of VRS, Ex-gratia, Encashment of Leave, Bonus for 2002 and Leave Travel Allowance would be paid in 25 installments initially between February and December 2003 when an instalment of Rs.5,000/- per month would be paid. Thereafter, between January 2004 and

June 2004, an installment of Rs.10,000/- per month would be paid, while the balance would be paid in equal installments between August 2004 and March 2005. In the event that the Company was unable to raise funds, it was stipulated, then in consultation with RMMS, the employees would be individually informed in which event they would be entitled to a higher rate of interest as provided in the agreement.

5. The VRS agreements were entered into on 29th December 2002. The agreements, as noted earlier, specifically provided that those employees who would not opt for voluntary retirement, would be redeployed and assigned work in any Section, Department or Unit of the Company. The employees agreed to co-operate in the re-organization and restructuring of manufacturing activities. On 30th December 2002 at a meeting of the Board of Directors, the Chairman of the Board, informed the Board of the agreements for voluntary retirement and stated that he was hopeful that all the workmen would opt for VRS "thus enabling the land development in Mumbai units as envisaged under the Draft

Rehabilitation Scheme submitted to IDBI, the operating agency recently." The Chairman stated that in the event that all the workmen at the Crown Mills Unit and the Process House Division did not opt for VRS, it would not be possible to properly reorganize or restructure the working of any unit in Mumbai with the small group of workers who may not opt for VRS and it would be impossible to run such operations except at heavy cash losses. Therefore, opined the Chairman, "the Company would have no alternative but to exercise an option of closure of all units in Mumbai i.e. "A/B" Units at Mahalaxmi, "C" Unit at Dadar and Process House at Prabhadevi." The Board thereupon passed a resolution authorising the making of an application for closure of the Mumbai Units under the Industrial Disputes Act, 1947. In the agreements for voluntary retirement that the Company entered into with the RMMS as a recognised Union, there was an express assurance that workers who would not opt for voluntary retirement would be redeployed in the reorganized and restructured manufacturing activities of the Company. Barely had the ink dried upon the VRS Agreements of 29th December 2002, that the then

Chairman of the Board of Directors informed the Board on the next day, 30th December 2002, that if all the workers did not opt for VRS, it would not be possible to restructure the working of any unit in Mumbai with the 'small group of workers' who may not opt for VRS and that closure should accordingly be resorted to. From the closure application filed by the Company before the Commissioner of Labour, it is apparent that immediately thereafter all activities came to a stand still on 1st January 2003. All spinning activities at the Crown Mills Unit showed zero production from January 2003 onwards. The figures on weaving between January and March 2003 have similarly been reported as nil. What, therefore, took place was that commencing from 1st January 2003, all production activities at the units were brought to a complete stand still and there was no production at the units.

6. On 10th April 2003, the Company moved applications under Section 25-O of the Industrial Disputes Act, 1947 each in respect of the Crown Mills and the Process House Units. The Company stated that it was one of the oldest textile Companies in

the country that had established a reputation in the domestic and export markets. The operations of the Company were stated to be profitable and satisfactory until 1995-96. The profitability is stated to have deteriorated from 1996-97 due to several factors beyond the control of the Company such as high labour costs, high cost of utilities such as power and water in Mumbai, unfair competition from small scale/power loom sectors and 'various Government Policies' favouring the de-centralised sector. The Company sustained net losses of Rs. 9.40 crores in 1997-98 which increased to Rs. 46.60 crores in 2000-01 and as of 30th September 2002, the cumulative losses were stated to be Rs. 185 crores. The Company , it was stated, had to make a reference to the BIFR under the Sick Industrial Companies (Special Provisions) Act, 1985 since as of 31st March 2001 its net worth stood eroded. The BIFR had declared the Company as a Sick Industrial Undertaking on 4th December 2002. In support of its proposal to close down the undertakings, the Company claimed that many composite mills at Mumbai including the First Respondent had become sick and had closed down or were proposing closure due to the following

reasons:

(a) Government policies: The Company claimed that the decentralized sector has been a recipient of several concessions and exemptions in fiscal, trade and labour policies. The excise duty structure and quota policy were alleged to be biased towards the small scale and decentralized sectors;

(b) Attempts to rectify anomalies in Government policies were alleged not to have borne fruit. As a result, the share of fabric production of the composite mill sector was reduced to less than 4% in 2001.

(c) Fiscal policies of the State Government and the Municipal Corporation were alleged to be against the interest of the Textile Industry in Mumbai and municipal charges for water, a major input for textile production, were stated to be highest in the world;

(d) Unfair competition from the unorganized sector which

has enjoyed concessions and also resorted to evasive practices;

(e) High labour cost, low level of productivity and high input cost in Mumbai Mills;

(f) Constraints to modernization on account of resources;

(g) Over capacities in the global market – affecting the margins for exports;

(h) Increased debt burden due to interest liabilities and funding of cash losses.

The Company contended that it had attempted to avoid closure during the previous two or three years by discussing and trying out various alternatives in the product-mix and marketing/supply chain. The Company, it was stated, attempted financial restructuring with the help of Financial Institutions and in order to reduce the interest burden but this could not result in improving the position. The

promoters were stated to have brought in funds to improve liquidity and some funds were raised by development of property in Mumbai. According to the Company, the Bombay Textile Research Association had carried out a techno-economic feasibility study and had recommended closing down of all operations of textile units in Mumbai. Finally, it was stated that following the VRS agreement dated 29th December 2002, 347 employees at the Crown Mills Unit and 242 employees at the Process House Unit had not opted for voluntary retirement and since the majority of the employees had opted for VRS, it was impossible to continue operations except at heavy cash losses. The Company claimed that with this small group of employees, it was not possible to properly reorganize or restructure the working of the unit and run the same viably.

7. Evidence was adduced before the Industrial Tribunal both on the part of the management as well as on behalf of the Union. By its Award dated 21st February 2004, the Industrial Tribunal came to the conclusion that the Company had established

a case for closure under Section 25-O. The Industrial Tribunal, directed that the closure compensation shall be paid within a period of 30 days and that workmen would be granted the closure compensation or payment due under the VRS agreement dated 29th December 2002, whichever was more beneficial. The Industrial Tribunal also directed that VRS payments due to employees who were still to be paid should similarly be discharged and paid within a period of 30 days.

IV

8. The appropriate Government in considering the application for the grant of permission for the closure of the two industrial establishments was exercising power under Section 25-O of the Industrial Disputes Act, 1947 since the threshold requirement for the application of Chapter VB exists in the present case. Under sub-section (1), the employer, at least 90 days before the date on which the intended closure is to become effective has to apply to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking. Under sub-section (2)

of Section 25-O, the appropriate Government is under a mandate to make such enquiry as it thinks fit, after giving a reasonable opportunity of being heard to the employer, the workmen and persons interested in the closure. In deciding whether to grant its permission, the appropriate Government has to have regard to (i) The genuineness of the reasons stated by the employer; (ii) The adequacy of those reasons; (iii) The interests of the general public; and (iv) All other relevant factors. The appropriate Government is not bound to grant its permission for, sub-section (2) empowers it to grant or refuse permission. The order of the appropriate Government granting or refusing permission is final and binding on all parties and is to remain in force for a period of one year from the date of such order.

9. The provisions of Section 25-O as they now stand, were substituted with effect from 21st August 1984 by Amending Act 46 of 1982. The provisions of the Act, as originally enacted, were held to be unconstitutional by the Supreme Court in its decision in **Excel Wear v. Union of India,** AIR 1979 SC 25. After the decision in

Excel wear, the Constitution Bench of the Supreme Court, upheld the constitutional validity of Section 25-N relating to retrenchment in **Workmen, Meenakshi Mills Ltd. v. Meenakshi Mills Ltd.**, AIR 1994 SC 2696. After Parliament introduced a new Section 25-O by Central Act 46 of 1982, the constitutional validity of that provision was challenged before and upheld by a Constitution Bench of the Supreme Court in **Orissa Textiles & Steel Ltd. v. State of Orissa**, 2002-I-LLJ 858. In **Orissa Textiles**, the Constitution Bench held that though the decision in **Meenakshi Mills** dealt with retrenchment, the same principles would apply to a closure as it also had the effect of the termination of service though of all the workmen. The Constitution Bench held that the vice which was found in the provisions of Section 25-O as they were originally enacted had been cured by the amended provision. The Supreme Court held that no longer was an order under Section 25-O to be based on the subjective satisfaction of the appropriate Government but, the new provision clearly mandated (i) The holding of an enquiry; (ii) An opportunity of being heard; (iii) Consideration of the genuineness and adequacy of the reasons stated by the employer,

the interest of the general public and other relevant factors; (iv) A reasoned order by the appropriate Government; (v) Furnishing of precise details by the employer containing requisite information justifying closure; (vi) An enquiry into the correctness of the facts stated by the employer and all other relevant materials including bonafides of the employer; and (vii) Ascertainment by the appropriate Government of the correctness of the facts stated by the employer; of whether the proposed action was necessary and if so, to what extent. These were the fundamentals which formed the basis for the Supreme Court to uphold the constitutional validity of the new provision. The following extract from the judgment of the Supreme Court is material for the present purpose:

> "Now in amended Section 25-O the words used are "the appropriate Government may, after making such enquiry as it thinks fit, and after giving a reasonable opportunity of being heard to the employer, the workmen and persons interested in such closure may, having regard to the genuineness and adequacy of the reasons stated by the employer, interest of the general public and all other relevant factors by order and for reasons to be recorded in writing, grant or refuse to grant such permission." Thus, now the appropriate Government before passing an order is bound to make an enquiry. Now the order passed by the appropriate Government has to be in writing and contain reasons. As in the case of retrenchment, so also in closure, the employer has to

> give notice by filling up a from in which he has to give precise details and information. As held in Meenakshi Mills' case the requirement to make an enquiry postulates an enquiry into the correctness of the facts stated by the employer in the notice served by him and also all other relevant facts and circumstances including the bona fide of the employer. Now an opportunity to be heard would have to be afforded to the employer, workmen and all persons interested. The detailed information which the employer gives would enable the appropriate Government to make up its mind and collect necessary facts for the purposes of granting or refusing permission. The appropriate Government would have to ascertain whether the information furnished is correct and whether the proposed action is necessary and, if so, to what extent. The making of an enquiry, the affording of an opportunity to the employer, the workmen and all interested persons and the necessity to pass a written order containing reasons envisages exercise of functions which are not purely administrative in character but quasi-judicial in nature." (emphasis supplied).

10. The power of the appropriate Government under Section 25-O has been held to partake of the exercise of a function which is judicial in nature. The Supreme Court held in **Orissa Textiles** that merely because the reasons furnished by the employer are genuine and adequate cannot mean necessarily that the permission to close must always be granted, for there may be cases where reasons though genuine and adequate are overridden

by the interest of the general public of a compelling nature. The principle is stated thus in the decision of the Constitution Bench:

> "Amended Section 25-O lays down guidelines which are to be followed by the appropriate Government in granting or refusing permission to close down. It has to have regard to the genuineness and adequacy of the reasons stated by the employer. However, merely because the reasons are genuine and adequate cannot mean that permission to close must necessarily be granted. There could be cases where the interest of general public must be of a compelling or overriding nature."

The decision of the Supreme Court in **Orissa Textiles** is also an authority for the proposition that some difficulty or financial hardship in running the establishment does not constitute a sufficient ground for closure. In order to sustain a case of closure, the employer must establish that it is impossible to continue to run the establishment:

> "It must however be clarified that this Court is not laying down that some difficulty or financial hardship in running the establishment would be sufficient. The employer must show that it had become impossible to continue to run the establishment." (emphasis supplied).

11. The importance of the employer furnishing precise

details and information has been underscored in the judgment of the Supreme Court in **Orissa Textiles**. Section 25-O requires an enquiry by the appropriate Government into the genuineness and adequacy of reasons stated by the employer, the interest of the general public and all other relevant factors. An enquiry into the correctness of the facts stated by the employer postulates that there must be a full and correct disclosure by the employer. An enquiry into all other relevant facts and circumstances includes an enquiry into the *bona fides* of the employer. The information which the employer supplies enables the appropriate Government to collect necessary facts in deciding whether to grant or refuse permission. **Orissa Textiles,** requires the appropriate Government to (i) ascertain whether the information furnished is correct; (ii) ascertain whether the proposed action is necessary; and (iii) even if the information is correct and the proposed action is necessary, to what extent is it warranted. Closure as defined in Clause 2(11) means the permanent closing down of a place of employment or a part thereof. An element of proportionality must necessarily permeate the decision making process. Even if closure is

necessary, the extent of the closure must be enquired into. The extent of the closure must bear nexus to the reasons justifying the closure, the interests of the public and all relevant factors. The approach of the Court in interpreting Section 25-O is similar to its approach in interpreting Section 25-N.

12. The Court has to be mindful of the circumstance that while introducing an amendment in 1976, Parliament had in its Statement of Objects and Reasons specifically stated that cases of large scale retrenchment as well as of closure had been reported time and again and that such action on the part of the management had resulted in an "all round demoralising effect on the workmen". The Statement of Objects and Reasons provided that the restrictions on the right of the employer to effect lay off, retrenchment and closure was to prevent avoidable hardship to the employees resulting from retrenchment by protecting existing employment. Parliament made it a specific object of legislative policy to check the growth of unemployment which would otherwise be the consequence of retrenchment in industrial establishments

employing large numbers of workmen. The object was to maintain a higher tempo of production and productivity by preserving industrial peace and harmony.

13. The Directive principles of State policy contained in Part IV of the Constitution inter alia provide in Article 38 that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice social, economic and political, shall inform all the institutions of national life. Under Article 39(a) the State is required to direct its policy towards securing that men and women equally have the right to an adequate means of livelihood. Article 41 directs that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. Article 43 provides that the State shall endeavour to secure, by suitable legislation or otherwise to all workers, work, a living wage, conditions of work ensuring a decent

standard of life and full enjoyment of leisure and social and cultural opportunities.

14. In **Meenakshi Mills,** the Supreme Court held that Section 25-N seeks to give effect to the mandate contained in the Directive Principles of the Constitution. That must necessarily apply to the provisions of Section 25-O. The serious dislocation that is caused to society upon rendering large groups of industrial workers unemployed was present to the mind of Parliament when it enacted the provisions of Section 25-O of the Act. After all, the settlement of industrial disputes and the maintenance of industrial peace are two conditions which lie at the very foundation of industrial jurisprudence in our country.

15. Even before the decision in **Orissa Textiles**, several Benches of this Court did have occasion to consider the nature of the function which the appropriate Government exercises in deciding whether or not to grant its permission to close. Without burdening the judgment with a long line of authorities, it is

nevertheless necessary to advert to some of those decisions. In **Association of Engineering Workers vs. Multiweld Wire Company Pvt. Ltd. & Ors.,** 1995 III LLJ 644, Mr.Justice S.P. Bharucha (as the Learned Chief Justice then was), underscored the need for the employer to disclose the factual data upon which a decision has been taken to close down the undertaking. The source of such factual data, the Court held, must be indicated and where possible annexed so that its correctness could be verified. The person or body of persons who had taken a decision to close down the undertaking must be specified and the application for permission or the reasons for closure must be signed on behalf of the employer by such person. The employer must specifically and precisely disclose what attempts were made to avoid closure:

> "The statement of reasons given by an employer for closing down an undertaking must be examined to determine that the closure is not reckless or unfair or unjust or mala fide, or for inadequate or insufficient reasons and that it would not be prejudicial to the interests of the general public. To enable the authorities to determine this the reasons for the closure must state the factual data upon which the employer has taken the decision to close down the undertaking. The source of such factual data must be indicated and where possible, annexed so that its correctness is verifiable. The conclusions drawn by the employer from the factual data

> must be stated. The person or the body of persons which has taken the decision to close down must be pinpointed. The reasons for closure and/or the application for permission to close down must be signed on behalf of the employer by the person or one of the body of persons which has taken the decision to close down. To the same end the employer must also set out precisely what attempts, if any, it has made to avoid the closure."

In the case before the Learned Single Judge, a recession in the international market was sought to be advanced as one of the grounds for closure. The Learned Judge held that the application furnished no material or publication to support the averment. Similarly, there was no material or publication in support of the averment that prices in the market had come down considerably and manufacturers from developed countries were making distress sales. Similarly, there was an averment about certain companies in the Gulf countries with which the employer found competition difficult, but neither the companies nor the Gulf countries were named. There was no documentary support for the averment that the price of the raw material had come down in the international market in the previous four years. In the circumstances, the order

of the Industrial Tribunal was quashed and set aside and the matter was remanded back for fresh decision by the Tribunal. I advert to this appreciation of facts because it indicates the approach of the Court. The employer must establish the grounds for closure, the genuineness of those grounds and the necessity to close by proof which is valid and acceptable. The *ipse dixit* of the employer cannot be accepted. The employer must disclose the source of his data because it is only then that an ascertainment of facts is possible.

16. In 1998, a Division Bench of this Court in **Maharashtra General Kamgar Union Vs. Vazir Glass Works Ltd.,** 1998 III LLJ 231, had occasion to revisit the issue. Mr.Justice F.I. Rebello delivered the landmark judgment of this Court. That was a case where the management had set up a new plant in the State of Gujarat and had created a situation wherein the factory of the Respondent was allowed to die. The company transferred all its business and key personnel to the new plant and the Directors of the new Company which was set up were related to the Directors

of the Respondent-Company. The Division Bench noted that the Tribunal had considered a chart produced by the Company showing the cost of fuel including that of natural gas, LPG and other products. These were seriously disputed. In that context, the Division Bench held thus:

> "Mere production of private documents is not proof of the contents. Even before the Tribunal, though strict rules of Evidence Act are not applicable, none the less principles of the Evidence Act have to be followed if the company sought to rely upon the said documents. The Tribunal has totally lost sight of this fact while upholding the contention of the respondent company. The Apex Court in Ahmedabad Mill Owners Association case (supra) has held that "Single minded statements produced by a party should not ordinarily be regarded as decisive. Therefore, this finding arrived at without considering the union's contention cannot be sustained."

The Division Bench held that the object of Section 25-O was to protect the workmen from unemployment and the situation in which the management found itself was of its own creation. The reasons for closure, therefore, could not be genuine:

> "The provisions of Section 25-O are for the benefit of workmen, so that they are not left jobless. Is the present case not a closure brought about deliberately and malafide? If one goes behind the smoke screen or lifts the corporate veil there is no doubt whatsoever from the

> facts on record that the respondent company brought about the situation by not taking any steps which a prudent management had to take to avoid closure of business. This was done with a malafide intent and purpose of closing down the respondent company. This act was brought about as by 1991-92, Neutral Glass & Allied Works, a sister or associate company with same or more production capacity than the respondent-company had become fully operational and it could cater to the full needs of the customers who were earlier being supplied by the respondent company with larger profit margins. Therefore the reasons for closure cannot be said to be genuine."

17. One of the submissions that was urged before the Division Bench was that the Company had faced severe competition from its competitors in Gujarat and that its production costs were high. Rejecting the submission, the Bench held that this was not a case where a company was unable to sell its product. No material had come on record to show that the company could not sell its product at a price at which it was selling or that on account of high prices customers had withdrawn their orders and placed them with others. In this context, the Bench held as follows :

> "The company if it wanted to establish that it would not be financially viable ought to have produced that

> evidence to show that it could not sell its product, that its competitors had taken over its market and that even if they had produced with the existing capacity, it would not have been financially viable. This the company has failed to do. The real high cost of production vis-a-vis its competitors were wages. The company had already reduced the workforce from 775 to 321. In any established company, the wages are bound to be higher than in a newly established industry. However, an older industry has the market and goodwill which the new industry does not have. As far as technology is concerned any prudent management upgrades technology over the years as and when technological innovations take place. Can therefore, the reasons given by the company be said to be adequate? On this ground also we are of the view that the said reasons are not adequate."

The observations of the Division Bench have a striking relevance to the present case :

> "The State is very much concerned with the closure of industries as it has an adverse effect on employment potential in the State and the soundness of its economy. In fact the legislature itself has recognised this fact by calling on a company/undertaking to move an application under Section 25-O of the Act to the appropriate Government. There is a purpose behind this. It is the State Govt. which can give concessions in the form of tax facilities, reduction of power tariff etc. in order to enable an industry to stand on its own feet and/or to obviate its financial and other difficulties. The State invites entrepreneurs to set up industries in backward area of the State, provides infrastructural facilities, gives subsidies, and tax concessions etc. with a view that

> more and more industries will be attracted which will help the State provide employment to its residents and bring in resources to meet the expenditure on its welfare schemes for the economically backward and public at large. If an employer who has set up an industry in a State has prospered therein afterwards because of the increase in cost of production arising out of higher wages and cost of raw material, decides to pack off and set up the same industry in some other State where he enjoys better tax benefits or facilities, benefit of low wages and other such concessions, is allowed to close down the industry without making attempts or taking steps to overcome the difficulties the State will be faced with a situation of industries running away to States which offer more facilities as and when cost of production on account of higher wages and/or raw material goes up. In a case like the City of Mumbai where the cost of land has shot up astronomically, industrialist would prefer to close down industries and make their fortune by developing the land and go to neighbouring States to set up such industries. This would lead to a flight of industries which no State can permit."

V

18. In the light of the law which has been laid down by the Supreme Court and by the Division Bench of this Court, the facts of the present case must now be assessed. The applications for closure were signed on behalf of the employer by Dinesh Narendra Tidke, the President of Hindoostan Spinning and Weaving Mills Ltd. In support of the applications, Mr.Tidke filed his affidavit in

lieu of Examination-in-Chief stating that on account of "deteriorating financial position and considering the various factors it was considered impossible to continue working of the two units economically and the Board of Directors took the decision as there was no alternative but to close down the units." Mr.Tidke stated that when the application for permission was made, the financial position as given in the application was a loss of Rs.185 crores which had further deteriorated into a carried forward loss of Rs.237 crores for the period ending 30th June 2003. Mr.Tidke sought to confirm the correctness of the reasons for the losses which were sustained by the Company. The decision to effect closure of the two units was according to him in public interest and in the interest of the employees, shareholders and financial institutions. He sought to produce a certificate dated 10th April 2003 of a Chartered Accountant, H.G. Pandhi and Company, certifying the correctness of the Annexures and the items contained in the application for closure.

19. The cross-examination of Mr.Tidke is in my view

significant to the outcome of these proceedings – significant because it has a bearing on the correctness, genuineness, and the adequacy of the grounds for closure. Mr.Tidke stated that for Units C and D (Crown Mills and Process House Division to which the present case relates), a VRS agreement was entered into on 29th December 2002. From both these units 1600 employees opted for VRS. Similarly, out of those employees in Unit B at Mahalaxmi, who had opted for VRS 1350 were yet to be paid their VRS dues in full. From B, C and D Units, there were in all more than 3000 employees to whom VRS dues were still to be paid in full. 70% of the employees from Units C and D were stated to have opted for VRS and to whom post dated cheques were given. However, Mr.Tidke stated that these employees were asked not to send those cheques for encashment in the Bank. As a result, in Units C and D 90% of the amount of VRS remained unpaid.

20. Mr.Tidke deposes that in 1998, it had come to his notice that the running of these Units was not beneficial. As a President, he had taken various measures such as cost reduction,

introduction of a new product mix and other corrective measures. In the matter of cost reduction, there was a reduction in energy consumption, reduction in wastages and of damages. The cost of labour was also reduced on account of rationalisation. Where workers were found underutilized under industry norms, various duties were clubbed and cost of employees was reduced to that extent. The witness stated that effective support had been given by the recognised Union to the management for this purpose and in every agreement with the Union, there was a clause pertaining to the reduction of strength of excess employees. The witness stated that between 1998 and 2003, new machinery had been purchased in Crown Mills and Process House Division. The new machinery was fully utilised after installation and all benefits were obtained by the installation of these machineries. Benefits such as higher production and quality production were derived from the installation of the machineries. The witness could not quantify the exact reduction in production cost due to installation of new machineries. In the case of Crown Mills and Process House, the witness deposes, productivity indices were compiled by the

management though he was not able to precisely quantify the period of this achievement. Though the witness stated that the Board of Directors had taken the decision to close down both the Units, he was unaware as to whether the reasons for the closure given in the application had been approved and reduced in writing in the meeting of the Board.

21. The witness admitted that there was no separate Profit and Loss account of Crown Mills or for Process House Division. The witness was then confronted with the provisions contained in clause (k) of the VRS agreement relating to the redeployment of employees who do not opt for VRS and for the assignment of work to them. The witness was specifically asked about the assurance which was held out to the employees on 29th December 2002 and how, within a period of two days thereafter, on 1st January 2003 there was no work left for the employees who had not opted for VRS. The witness answered that there was no work on the date when the VRS agreement was entered into and while entering into an agreement, it was contemplated that something can come and

work can be assigned to the employees who do not opt for VRS. The witness, however, admitted that the employees were not informed in writing on the date of the agreement that work was not in existence and that it was not possible to determine as to whether the work could be available in future. As if by an afterthought the witness added that they were orally informed about the situation. The witness stated that the Company had commenced operation of the new Unit at Karad in November 1995 for which an amount of Rs.64 crores was invested by the Company. The profit and loss account of the Karad Unit had not been separately maintained. The witness admitted that personally he did not know the entries in the balance-sheets. The witness specifically admitted that no details regarding the production cost of the Crown Mills and Process House Division had been furnished by the management. The witness stated that he could not say anything about profitability of the Company since he was not the authority on that. He was not aware about the capital investment in the Crown Mills. When questioned about the issue of productivity, the witness stated that by low level of productivity, he meant production below the

prescribed norms. He admitted that the prescribed norms were not filed before the Tribunal and the norms of production of the employees of Process House and Crown Mills were not given. In support of the closure application, reliance has been placed on a report of the Bombay Textile Research Association. The witness admitted that that document had not been produced before the Tribunal.

22. The attention of the witness was specifically drawn to the averments contained in para 22-d of the application for closure. Para 22-d, it must be noted, dealt with the allegation that high labour cost, low level of productivity and high input cost in Mumbai Units were some of the grounds for closure. The witness admitted that in support of this pleadings no documentary evidence had been furnished before the Tribunal. Similarly para 22-c of the application for closure dealt with the ground of there being stiff unfair competition from the unorganised sector. The witness admitted that except the balance sheet, there was no other evidence to support the the aforesaid figures. The witness, as

noted earlier, had produced a certificate of H. G. Pandhi & Co., Chartered Accountants. He, however, admitted that this firm was not appointed as the Chartered Accountant of the Company in the meeting of the General Body and that C.C. Chokshi & Co. were the Chartered Accountants of the Company. The witness admitted that on the implementation of VRS, no arrangement was made for providing work to persons who did not opt for VRS and there was no work available. The witness admitted that water was supplied to all the textile industries at the same rate by the Municipal Corporation and that the same rates of electricity were applicable to all the textile mills. Fuel was supplied to all the Textile Industries at the same rate. The witness admitted that the Board of Directors did not communicate to him in writing about the decision to close both the Units though he claimed that he was orally informed. The witness was confronted with a statement in regard to the deteriorating financial condition and he explained that he meant that losses caused to the Company enhanced day by day. Explaining the 'various factors' , the witness stated that he meant the prevailing marketing condition, cost of manufacturing and

availability of funds for running the units. He admitted that pertaining to the above, he had not furnished any documentary evidence before the Tribunal. The witness admitted that no separate report or document had been filed pertaining to the market condition in respect of Crown Mills and Process House. No letter of the Bank had been produced regarding the refusal to give working capital to Crown Mills and Process House. The loss of Rs.52 crores that was caused between April and June 2003 was because there was no production. The witness admitted that no specific document had been filed as to how the two units have been affected by Government Policy. He admitted that no documents have been filed on the record as regards the consequences of Government decisions on the two Mills. The witness stated that by fiscal policies mentioned in para 22-b of the closure application, he meant the Municipal taxes, water taxes and taxes of Government, Octroi etc. He, however, admitted that there was no separate statement regarding the effect on production in the Crown Mills and Process House due to such taxes. The cost of production of fabrics produced in Crown Mills and Process House

had not been filed. Except for a mention that the cost of production in powerlooms was less, he admitted that it had not been specified as to what extent it was less than the Mill production. The witness admitted that separate figures of wages of Crown Mills and Process House for the preceding three years prior to the permission to close were not mentioned in the application. The witness specifically admitted that regarding labour productivity, reports of the Textile Association had not been produced. The witness admitted that no statement had been filed regarding the productivity of workers in the Crown Mills and Process House. The witness admitted that in both Crown Mills and Process House, new machineries were brought in and both the Units were partly modernised. There was a corresponding reduction of costs on the arrival of new machineries and that the wage bill was partly reduced thereafter. The witness was unable to state anything about the export figures for the preceding three years. He admitted that in Mumbai, the textile Mills of Bombay Dyeing, Century Mills, Ruby and Simplex Mills were still running. The witness was unable to state the exact figures of debt outstanding against the Company

on 1st April 1999 or debt and interest due on the date of the application for permission to close down both the units. The witness admitted that no details were furnished of the unitwise increase of the cost of production. The witness stated that he was not personally aware about the financial reconstruction measures taken by the Company with the help of financial institutions. The witness was specifically questioned as to whether any report had been sought from BTRA on whether the mills could be run with the available strength of 589 employees. The witness answered that no such report had been sought.

23. The second witness who deposed on behalf of the Company was Shri M. P. Ghaisas, Senior Vice President (Finance). Ghaisas, it must be noted, was neither a signatory to the two applications for closure, nor indeed was he a party to the decision taken by the Board of Directors to close down the two Units. In the course of cross-examination, he admitted that he was neither the author of the balance sheets, nor the auditor who signed thereon. He stated that he knew about the contents and

statements of the balancesheet though according to him he would not be able to say anything about the remarks of the auditors given in the auditors' report annexed to the balance sheet. Referring to the VRS agreement dated 29th July 2002, the witness stated initially that it is correct that over 90% of the employees from both the units had opted for VRS. The witness admitted that only 10% of the dues of the employees were paid and that 90% remained outstanding. In the Crown Mills there were about 1500 to 1600 employees working on the said date and on accepting VRS 600 employees had remained; between 1000 to 1200 employees had been working in the Process House. The witness was confronted as to how then had he stated that only 10% of the employees working in the Crown Mills and Process House remained after VRS. The witness stated that he could not say whether the percentage of the employees who did not opt for VRS in both the Mills was about 33%. The witness was unable to state as to how much of the total loans had been utilised for the purposes of Crown Mill or the Process House and he stated that the common cost of administrative and general expenses was not apportioned unitwise.

The supporting documents of the audit of the Chartered Accountant had not been produced before the Tribunal except annexures filed with the certificate.

24. An analysis can now be made of the facts of the present case on the basis of the aforesaid evidence and the material that has come on the record. On 29th December 2002, VRS agreements were entered into by the management with RMMS as the recognised Union. The VRS agreements inter alia contemplated ex-gratia compensation of 36 days' salaries/wages without considering the attendance of 240 days per each completed year of service (or part thereof in excess of six months) as on the date of acceptance of retirement by the Company to all those employees who were 58 years of age or below. Clause 4(k) of the VRS agreement specifically provided that the remaining employees who will not opt for voluntary retirement under the Scheme will be redeployed and assigned work in any section, department or units of the Company without adversely affecting their service conditions. The employees and the recognised Union

thereupon agreed to co-operate in the re-organization and restructuring of manufacturing activities in any of the Units in accordance with the requirement of the Company. The Company reserved liberty to itself to dispose of excess or redundant plant and machinery, including land and building in order to raise funds for implementation of the VRS and for re-organizing and rationalization of manufacturing activities in a "most economic and viable manner". The Company, therefore, held out an unequivocal assurance on 29th December 2002 that those employees who would not opt for VRS would be redeployed and assigned work by the Company and training would be imparted, if necessary. The absence of *bona fides* is, however, apparent from the text of the resolution of the Board of Directors that was passed on 30th December 2002, the very next day after the VRS agreements were executed. The Chairman of the Board purported to inform the Board that in case all the workers in the Crown Mill and Process House did not opt for VRS, it would not be possible to properly re-organise and restructure the working Units in Mumbai with a small group of workers who may not opt for VRS and it would be

impossible to run such a Unit except with heavy cash losses. While, therefore, on the one hand the Company had held out a solemn promise to the recognised Union and to the body of workmen of providing work to those who would not opt for VRS, the Board of Directors was informed that it would not be possible to reorganise or restructure the working of any Unit in Mumbai for "a small group of workers who may not opt for VRS". How the Chairman believed that "a small group of workers" would not opt for VRS and on what basis it was sought to be conjectured that it would not be possible to reorganise and restructure the working despite a solemn agreement with RMMS entered into one day prior thereto defies all logic and explanation. The Chairman was hopeful, as he stated that all workmen would opt for VRS, facilitating the development of land. On this basis the Board of Directors passed a resolution on 30th December 2002 authorising the filing of an application for closure of the Mumbai Units under the Industrial Disputes Act, 1947. On 30th December 2002, the management addressed a written communication to the recognised Union setting out a schedule of payment. Now, it is common

ground that the Company committed defaults in the payment of the dues of the workers who had opted for VRS and instructions were furnished to the workers from time to time not to deposit post dated cheques.

25. Mr.D. N. Tidke, who was the President of the Company was specifically asked as to whether on the implementation of VRS, any arrangement was made for providing work to those who had not opted for VRS. He admitted that no arrangement had been made to provide work to the set of employees who had not opted for voluntary retirement and there was no work available. From the admission of the witness in the course of cross-examination, it is abundantly clear that on and after 29th December 2002 when the VRS agreement was signed with the recognised union, no effort whatsoever was made by the management to provide work to such of the employees who had not accepted voluntary retirement and, that despite a solemn assurance that was held out in the agreement, there was no attempt to redeploy these workmen in any other section or department of the Company. If

effort was made, the Company ought to have placed it on the record, but the answers of the witness make it clear that there was no effort in that direction. But what compounds the situation is the answer of Mr.Tidke to the effect that there was no work on the date on which the VRS agreement was entered into. In the face of the specific stipulation contained in the agreement, the witness had to admit that the employees were not informed in writing on the date of the agreement that there was no work in existence and that it was not possible to determine as to whether work could be made available in future. The admissions of the witness in the course of cross-examination only go to show that the stipulation contained in the VRS agreement for the redeployment of the workmen who would not opt for Voluntary Retirement in the other departments of the Company without affecting their conditions of service, was sham – a charade - and that there was no intention on the part of the management to comply with that statement even on the date when the agreement with the recognised Union was entered into. The conduct of the management was indeed clear from the manner in which, despite the express stipulation in the agreement, the

Board of Directors was informed by none other than the Chairman of the Company immediately thereafter that if all the workers did not opt for Voluntary Retirement, the Company would have to move an application for closure on the ground that with the ' small number' of employees that would be left, it would not be possible to restart operations except at a loss. In the application filed by the Company for closure, one of the grounds was that operations could not be commenced with the workmen who had remained. A perusal of the evidence, however, reveals that neither of the two witnesses has stated in the course of his evidence that the unit could not have been made operational with the 600 workmen who remained. Mr.Tidke was asked as to whether any report had been sought from the Bombay Textile Research Association on whether the Mills could be run with an available strength of 599 employees to which he answered by stating that no such report had been sought.

26. Counsel appearing on behalf of the Company, confronted with the difficulty that arises in sustaining the application

for closure with reference to the evidence of the President of the Company, urged before the Court that the evidence of Mr. Tidke should be kept aside and disregarded and the legitimacy of the action must be decided with reference to the evidence of Mr. Ghaisas who was the Senior Vice President incharge of finance. This attempt to gloss over the evidence of a material witness cannot be countenanced by the Court. Mr. Tidke, it must be noted, was the President of the Company, and was a signatory to the applications for closure. Mr.Tidke sought to support the reasons for closure that were furnished in the course of the application, in his examination-in-chief. The cross-examination of Tidke is entirely destructive of the case of the management and every material admission only goes to establish that the grounds or the basis on which closure was sought were not proved.

27. One of the principal grounds on which Counsel for the Union has impugned the approach and the findings of the Industrial Tribunal is that there is absolutely no evidence on the record of the Industrial Tribunal to establish the unviability of the Crown Mills and

Process House Units. A perusal of the evidence which was adduced before the Industrial Tribunal would show that there is no evidence that would establish that the Crown Mills and Process House Units had ceased to be viable economic entities. From the admission of the two witnesses during the course of cross-examination, the following position emerges beyond any doubt whatsoever:

(i) No details had been produced of the production cost of Crown Mills or the Process House Unit;

(ii) No document was produced on the market condition of Crown Mills and the Process House Unit;

(iii) There were no separate figures with respect to the wages for the Crown Mills and Process House Units for the previous three years on the record;

(iv) There was no statement in relation to the productivity of the Crown Mills and Process House Units on the record;

(v) No details of the unit wise increase in the cost of production was produced on the record for the Crown Mills and Process House Units;

(vi) No document had been produced on the record regarding the effect of Governmental policy on the Crown Mills and Process House Units;

(vii) Even the Senior Vice President (Finance) was unable to state as to how much of the total loans were utilised for the purposes of Crown Mills and Process House Units and he stated that the common cost of administrative and general expenses was not apportioned unit wise. One of the grounds for closure was low productivity but the first witness of the Company admitted that the norms of productivity were not filed nor was there any report of the Textile Association in relation to productivity. Similarly in regard to the ground that the units were affected by high labour cost and high input costs, there was an express admission that no

document was produced. There was an admission that no document was produced in relation to the prevailing market conditions, the cost of manufacture and the availability of the funds. The witness for the Company admitted that no letter from the Bank refusing to advance funds for the two units was produced. One of the grounds for closure was the effect of fiscal policy, but here again admittedly no material was produced. One of the principal foundations in the application for closure was the report of the Bombay Textile Research Association. For reasons best known to the management, the report of BTRA was never produced or proved in evidence. An adverse inference would have to be drawn.

28. The management deliberately suppressed basic and primary material having a bearing on the application for closure. A perusal of the evidence would demonstrate that the management miserably failed to establish a case for closure on the grounds that were sought to be advanced in support of the application. In view of the long line of authority, it was the bounden obligation of the management to establish the correctness of the facts stated in the

application for closure and in support of the grounds for closure. In support of those grounds a fair, full and candid disclosure of facts was necessary. The source from which the data had been generated had to be precisely identified so as to enable an ascertainment of the correctness of the facts. Counsel appearing on behalf of the Company relied upon charts which were part of the application for closure. These charts, it must be noted, do not by themselves constitute proof of the correctness of the figures contained therein. Attractively presented charts may make good presentation material for Board Room Conferences, but are not acceptable evidence in a Court of law. The contents have to be duly proved. This is something which the Company has failed to do in the present case.

29. In **Ahmedabad Millowners' Association vs. Textile Labour Association,** AIR 1966 SC 497, similar statements had been produced before the Industrial Court and the Supreme Court was constrained to observe (para 81 at page 521) that “some of these single-purpose statements are likely to create confusion and

should not ordinarily be regarded as decisive." In delivering the judgment of the Division Bench in **Vazir Glass Works Ltd.** (supra) F.I. Rebello, J. followed that line of authority in holding that such single-purpose statements did not amount to proof in support of an application for closure.

30. Counsel for the management then submitted that disregarding the evidence of the President of the Company, the case for closure should be held to have been substantiated on the basis of the evidence of Mr.Ghaisas who was Senior Vice President. As already noted earlier, the evidence of the President of the Company who was a signatory to the application for closure cannot be brushed aside for indeed there are important admissions that would shake the credibility of the case of the management and demonstrate a patent lack of bonafides. But even considering the evidence of the Senior Vice President (Finance) it is, to my mind, clear that his evidence does not establish a case for closure. For one thing, Mr.Ghaisas at the very outset of his Examination-in-chief stated that he was conversant with the facts relating to financial

matters of the Company and its two units. He was obviously not an authority to depose on the operational reasons for closure which form a substantial part of the application under Section 25-O. Mr.Ghaisas was not a signatory to the application for closure, nor indeed was he the authority who had taken the decision to close the two Units. In the course of his cross-examination, Mr.Ghaisas stated that he was not the author of the balance sheets; nor the auditor who had signed those balance sheets and that he would not be able to say anything about the remarks of the Auditors given in the statements attached to the balance sheets. While being cross-examined with reference to one of the balance sheets, the witness stated that he could not give a break up of the figures of the Units of Crown Mills and Process House. The witness stated that he was not able to state as to how much of the loan was utilised for the Crown Mills and Process House Units. He stated that the supporting documents relating to the audit by the Chartered Accountants had not been produced before the Tribunal except for the annexures filed with the certificate. The evidence of Mr.Ghaisas, therefore, in my view, does not go to establish the

case of the Company. The Constitution Bench of the Supreme Court in its decision in **Orissa Textiles** (supra) laid down that some difficulty or financial hardship in running an establishment would not be sufficient to justify closure and the employer must show that it had become impossible to continue to run the establishment. In the present case, the evidence which was produced before the Industrial Tribunal fails to meet the requirement of financial impossibility. It must be noted that the submission of the Union has been that the Units at Mumbai were not unviable and the downswing in the fortune of the Company coincided with the huge investment and outlay that was incurred in setting up the Karad Unit. The grievance of the Union was that the Karad Unit was the reason for the financial deterioration of the Company and that there was no evidence to show that the activities of the Units at Mumbai had been rendered financially unviable. Even at the cost of repetition, it would be necessary to record that no evidence was produced by the management before the Industrial Tribunal to show that the operation of the two Units at Mumbai had become impossible or that these two Units were unviable. The decision of

the Supreme Court in **Orissa Textiles** requires the appropriate Government to enquire into the correctness of facts stated by the employer; the genuineness and adequacy of the reasons of the employer and the interests of the general public, besides other relevant factors. In deciding whether to grant closure permission, the proportionality of the proposed action is a vital element for consideration. **Orissa Textiles** requires the Government to consider whether the proposed action was necessary and if so, to what extent. This again is an area where there was absolutely no evidence forthcoming on the part of the management. Indeed, the management proceeded on the basis that the development of the entire land of the Mills as real estate was the only course of action that should be followed. Both, the appropriate Government as well as the Industrial Tribunal, as the award would show, have been unmindful of the need to consider both the necessity for and the extent of the closure.

31. In metropolitan areas like Mumbai, a management of an industrial undertaking may find it convenient and profitable to close

down operations and to hand over the mill land for real estate development. The resultant dislocation of the social fabric is a matter of deep concern. The appropriate Government as custodian, in a democracy, of public interest and the Industrial Tribunals as interpreters of industrial legislation must carefully scrutinize, whether adequate and sufficient reasons for closure exist. Even if they exist, less intrusive options that would not be deprivative of the livelihood of workmen must be considered. Financial institutions which have a stake in the running of these undertakings cannot turn a blind eye to the serious possibilities of social disruption if long standing industrial establishments are allowed to close down. All possible alternatives for rehabilitation must be explored. There can be no greater value than protecting the source of livelihood and the dignity of workers in the work place. Unless the Industrial Tribunals are alive to this obligation, there role would be reduced to merely endorsing proposals for closure on superficially attractive grounds. In many cases, as the present, a scratch at the surface would reveal a want of bonafides, transparency and fair dealing by the management.

32. The scope of the jurisdiction of a High Court to issue a Writ of Certiorari under Article 226 of the Constitution upon a judgment of a Court or Tribunal subordinate to it, is settled by several judgments of the Supreme Court. In **Sayed Yakkob vs. K.S. Radhakrishnan**, AIR 1964 SC 477, a Constitution Bench of the Supreme Court held that a writ of Certiorari can be issued for correcting errors of jurisdiction; where an order passed by an inferior court or tribunal is without jurisdiction, or is in excess of it, or as a result of a failure to exercise jurisdiction. A writ can be issued where in the exercise of jurisdiction conferred on it, a Court or Tribunal acts illegally or improperly, as for instance, by deciding the question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted is contrary to the principles of natural justice. The supervisory jurisdiction of the Court which is the jurisdiction exercised while issuing a writ of Certiorari, is not in the nature of an appellate power. A finding of fact reached by an inferior Court or Tribunal upon an appreciation of evidence cannot be opened in these proceedings. The

sufficiency or adequacy of evidence cannot be reappreciated by the High Court under Article 226. However, on a finding of fact recorded by the Tribunal, a writ of Certiorari can be issued if it is shown that in recording the finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.

33. In the context of a case which arose under the Industrial Disputes Act, 1947, the Supreme Court held in **Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha,** 1980 I LLJ 137, that while every wrong order cannot be righted merely because it is wrong, Under Article 226, it can be quashed if it is vitiated by fundamental flaws of gross miscarriage of justice, absence of legal evidence, perverse misreading of facts, serious errors of law on the face of the order, jurisdictional failure and the like. Before the jurisdiction in Certiorari is exercised, it must be

shown that the order suffers from an error apparent on the face of the record. **Gujarat Steel Tubes** is also an authority for the proposition that the Court under Article 226 is not powerless to grant remedies that are appropriate to the judicial process. The Court held that "the wide words of Article 226 are designed for service of the lowly number in their grievances if the subject belongs to the Court's province and the remedy is appropriate to the judicial process."

34. The position in law was revisited in a judgment of the Supreme Court in **Surya Dev Rai v. Ram Chander Rai,** (2003) 6 SCC 675, where Mr.Justice R.C. Lahoti (as the Learned Chief Justice then was) held that Certiorari under Article 226 is issued to correct gross errors of jurisdiction when a subordinate Court has acted (i) without jurisdiction - assuming jurisdiction where it did not exist; (ii) in excess of its jurisdiction – by overstepping or cross the limits of jurisdiction; or (iii) in flagrant disregard of law or rules or procedure. A mere error of fact or law cannot be corrected by Certiorari unless the error is manifest and apparent on the face of

the proceedings and a grave injustice or gross failure of justice has been occasioned thereby.

35. The Industrial Tribunal was, in my view, fundamentally in error in totally ignoring the fact that there absolutely no evidence was produced on behalf of the management to establish the grounds for closure. In para 78 of its award, the Industrial Tribunal held thus :

> "The recurring losses and the financial difficulties caused by the financial drains and strains from various sources i.e. The stringencies of the policies, enhancement of taxes by the local bodies like Municipal Corporation and the autonomous body like electricity board, the unsatisfactory state of both the establishments thus making it difficult to sustain the production. The evidence offered by the Sanghatana could not contradict this."

Were the Industrial Tribunal to consider the evidence on the record, it would have found that none of the considerations to which it has referred viz., the stringency of policy, enhancement of taxes by local bodies and the electricity board or the unsatisfactory state of the two establishments in question had been proved in

evidence. There was no evidence on this. The Industrial Tribunal in its award has observed in para 82 that an analysis of the balance sheet given by the Company showed that both the Mills were running into losses and that even though efforts have been made in the past, they had not been found to be sufficient. Were the Industrial Tribunal to scrutinise the evidence, it would have only found, as admitted by Mr.Tidke in the course of examination that there were no details on the record relating to the unit wise increase of the cost of production, no statement of productivity of the two establishments which form the subject matter of the reference, no separate figures of wages in respect of the two establishments, no details on the production cost of the two units and no material to substantiate the plea of high labour cost, low productivity and high input cost. Nothing was placed on the record of the Industrial Tribunal to substantiate the position of the two units under consideration viz., Crown Mills and the Process House. The Industrial Tribunal proceeded on the basis that BTRA had in its report recommended closure of the Mills completely ignoring that the report of the BTRA has not been produced in the course of

evidence. In my view the entire approach of the Industrial Tribunal was flawed. The award proceeded to accept the *ipse dixit* of the employer without due regard to whether the case has been duly proved by any evidence on the record leave alone cogent and reliable evidence. The award therefore, in my view cannot be affirmed and requires interference in the exercise of the jurisdiction of this Court under Article 226 of the Constitution.

36. In dealing with this case, the Court has borne in mind the binding principles laid down by the Supreme Court. In the present case, the award of the Industrial Tribunal warrants interference for the reason that the Industrial Tribunal has in crucial areas noted earlier ignored material evidence. The Industrial Tribunal clearly failed to comprehend that the application for closure was not sustained with any evidence. This is a case of there being no evidence in support of the application for closure before the Industrial Tribunal. Material admissions of the two witnesses who deposed in support of the case of the management have been ignored. As in the case of the report of the Bombay Textile

Research Association, the Industrial Tribunal relied on a document which was not produced before it and was not marked in evidence. The entire approach of the Industrial Tribunal is manifestly contrary to the law laid down by the Supreme Court while interpreting Section 25-O. There are manifest errors on the face of the record. The award suffers from legal perversity. As a result of the award of the Industrial Tribunal, a grave injustice and a gross failure of justice has been occasioned which must warrant interference of this Court under Article 226.

37. On behalf of the Company reliance has been placed on the order passed by the BIFR on 1st April 2004 sanctioning the draft scheme for the rehabilitation of the Company under the Sick Industrial Companies (Special Provisions) Act, 1985. The Scheme inter alia envisages the closure of the operations of the Company in its Mills at Mumbai, “unlocking value of land” therein and the continuation of manufacturing operations at the Karad Unit of the Company. The debt burden of the Company is proposed to be settled out of the realisation that would result out of the

development of the land of the company. The order passed by the BIFR was carried in appeal and it has been affirmed by the AAIFR on 23rd December 2004. The orders of the BIFR and of the AAIFR are subsequent to the decision of the Industrial Tribunal and have been placed on the record of these proceedings during the pendency of the proceedings. This development does of course have a bearing on the case and will have to be considered. The Scheme sanctioned by the BIFR records that the dues payable to the workers as on 30th September 2002 for the Units at Mahalaxmi, the Crown Mills and Process House Division are Rs. 111.82 crores. Of these, the dues payable to the workers of the Crown Mills and Process House Division are stated to be Rs. 69.61 crores. The BIFR noted that permission for closure had been granted by the Commissioner of Labour under Section 25-O of the Industrial Disputes Act, 1947 on 30th June 2003. The order of the BIFR does recognise that the question of closure has not get attained finality. Clause 2 of the Scheme which deals with the debt profile of the Company inter alia makes the following provision in regard to the payment of workers' dues:

> "Note : The workers dues include the liability corresponding to VRS agreements entered into with RMMS/workers of Prabhadevi and Crown Mills units in December 2002. Additional liability on account of workers dues (in the event of adverse orders, if any, from the Industrial Court/Appellate Courts in respect of employees who have not opted for VRS) would be met by the company)."

The order of the AAIFR dated 23rd December 2004 contains the following observations that would be of relevance to the present case:

> "The sanctioned scheme also provides for financial restructuring and rationalization of work force with the object of reviving the viable manufacturing unit at Karad, which employs a very large number of workers. The non-viability of the two Mumbai units located at Dadar and Prabhadevi had been established by the report of BTRA and recognized by OA and all the financial institutions and the fact of closure cannot be revisited by this Authority. BIFR had correctly taken into consideration the closure of the two units in Mumbai, based on the orders of the Labour Commissioner which was also upheld by the Industrial Tribunal and had proceeded to approve the rehabilitation scheme formulated by OA. The interests of workers have been fully protected in SS-04. The VRS is to be paid in 24 monthly instalments and 597 workers who had not opted for VRS would be paid the closure compensation. The Labour Commissioner, Mumbai had directed the respondent company to extend the benefit of VRS to

> non-VRS employees also and this dispensation was reconfirmed by the Industrial Tribunal. However, on an appeal by the Respondent company the issue is now under adjudication in the Mumbai High Court. The respondent company has already effected the payment reckoned on the basis of closure compensation from the advance amount Rs.40 crores received from the developer – M/s. K. Raheja & Co. In the event the orders of the Labour Commissioner/Industrial Tribunal are upheld, the company would be compelled to make payment ..... to the 597 workers, who had not opted/taken VRS. The necessity for closing the units at Dadar and Prabhadevi has been examined and justified on grounds of public interest by the Labour Commissioner and upheld by the Industrial Tribunal, constituted under the IDA Act and the question of redeploying the 597 workmen in the two closed units at Dadar and Prabhadevi (Mumbai) does not arise."

38. Section 18(1)(da) of the Sick Industrial Companies (Special Provisions) Act, 1985 recognises that the scheme for rehabilitation may inter alia provide for the rationalisation of managerial personnel, supervisory staff and workmen in accordance with law. The words "in accordance with law" clearly postulate that the dispensation of the services of the workmen must take place subject to and in accordance with the provisions contained in the Industrial Disputes Act, 1947.

39. The subsequent events have, in a sense, overtaken the course of events. It is common ground that some part of the machinery has been redeployed from the Crown Mills to the Karad Unit (reference may be made in this connection to the 122nd Annual Report of the Company for the year 2002-03). The rest of the machinery and equipment, the Court has been informed, has been sold. There is in the facts of this case, a closure in fact and what remains is a shell of what was a textile mill. The BIFR and the AAIFR which are duly constituted adjudicatory bodies under the Sick Industrial Companies' (Special Provisions) Act, 1985 have sanctioned the scheme for rehabilitation which contemplates that upon the grant of closure permission, the Mill land at Mumbai would be sold to three special purpose vehicles and the funds that would be generated would be applied towards the repayment of the dues of the secured lenders viz., Banks and financial institutions, the dues of the workers and other statutory dues.

40. At this stage and particularly in the light of the fact that the draft scheme for rehabilitation has been sanctioned, upon

which the order of the BIFR was confirmed in appeal, it is impracticable if not impossible to visualise a situation where manufacturing operations in the Mumbai Mills can commence particularly since the plant and machinery have been sold. Counsel for the Union submitted before the Court that the Union would challenge the order of the AAIFR in an appropriate proceeding. The correctness of the order passed by the AAIFR does not fall for determination in these proceedings in which what is in issue is the correctness of the order passed by the Industrial Tribunal on a reference under Section 25-O(6). The AAIFR proceeded on the basis that the unviability of the two Mumbai Units was established by the report of BTRA though as noticed earlier, in so far as the present proceeding goes, this report was neither produced nor proved in evidence before the Industrial Tribunal. Be that as it may, in these proceedings, the Court has to take cognizance of the fact that a sanctioned scheme now exists under the SICA and which has been approved in appeal. This must be coupled with the circumstance that restarting the operation of the Mills' at Mumbai has been rendered impossible as a result of the sale of the plant

and machinery. These circumstances must be borne in mind in structuring final relief which this Court would consider as appropriate in the interests of justice.

41. The question which now remains for the Court to consider the operative direction that should be passed in the circumstances of the case. The plant and machinery have ceased to exist. Reinstatement or the restarting of the Mills is now veritably impossible. Counsel appearing on behalf of RMMS is, to that extent, justified in submitting that it is impossible to put the clock back. The Court must have due regard to the fact that the Scheme sanctioned by the BIFR is now awaiting implementation. The discussion in the earlier part of the judgment is sufficient to indicate that the conduct of the Company in the manner in which it has treated the workmen is patently lacking in bonafides. 1500 workmen in the Crown Mills and Process House Unit have accepted voluntary retirement. The agreement dated 29th December 2002 that was entered into by the recognised Union links the realisation of the dues of the workers with the eventual

sale of the Mill lands and the generation of proceeds therefrom. These workers languish for their dues with a collection of post dated cheques that have not been realised, in hand. Ordinarily, the principle of law to be applied is the principle that was formulated in **S. G. Chemicals and Dyes Trading Employees' Union vs. S.G. Chemicals and Dyes Trading Ltd.**, 1986 LAB. I.C. 863. There the Supreme Court held that if the services of workmen are terminated in violation of any of the provisions of the Industrial Disputes Act, 1947, then such termination is unlawful and ineffective and the workmen would ordinarily be entitled to reinstatement and payment of full back wages. The Supreme Court held that where the closing down of a particular division of the employer was illegal, the workmen would be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down. There are, however, exceptions to the general principle. In **Surendra Kumar Verma vs. Central Government Industrial Tribunal**, 1981 I LLJ 386, the Supreme Court held that setting aside the order terminating the services of the workmen must ordinarily lead to reinstatement of the services of workmen for, it

is as if the order has never been, and so it must ordinarily lead to back wages. However, the Supreme Court contemplated that there may be exceptional circumstances which make it impossible or wholly inequitable vis-a-vis the employer and the workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums. In such situations, there is a vestige of discretion left in the Court to make appropriate consequential orders. The ends of justice would be served by directing that the workers should be paid their earned wages upto the date on which the scheme came to be sanctioned by the BIFR. The scheme was sanctioned by the BIFR on 1st April 2004 and the sanctioned Scheme envisages an overall package for rehabilitation, involving inter alia the development of the land in the manner indicated therein. In my view, it would be appropriate for this Court in the exercise of its jurisdiction under Article 226 to direct that the earned wages of those workmen who have not opted for voluntary retirement shall be paid by the management until 1st April 2004.

42. That leaves the Court with the question as regards issuing an appropriate direction for the payment of compensation in lieu of reinstatement. Counsel appearing on behalf of RMMS urges that this Court should direct, as a measure of compensation, only the payment of an amount equivalent to what would be admissible under the VRS agreements dated 29th December 2002. In my view, it would neither be lawful, nor proper to foist upon these workmen, the payments envisaged in the VRS agreements – agreements that these workers had declined to accept, as not being conducive to their interest. As far as the RMMS is concerned, I have found it unnecessary for the purposes of these proceedings to comment on its role though some of the facts which have emerged on the record and adverted to in the judgment are disturbing to say the least. The VRS agreements which were negotiated by RMMS have yielded to the workmen little more than a sheaf of post dated cheques that are unrealised. Be that as it may, having perused the index of compensation which has been prescribed in the VRS agreements, the Court is of the view that this would not provide a just and adequate recompense to the workmen

covered in this petition who are forsaking their source of livelihood for all times to come. The workmen must have adequate recompense for the long years of past service and the loss of future income of livelihood. In the absence of a social security net in India, the Court under Article 226 must provide a safeguard against destitution that would otherwise result by closure. In **Bajaj Auto Ltd. Vs. Bhojane Gopinath D,** (2004) 9 SCC 488, the Supreme Court while determining the payment of reasonable compensation under the provisions of Section 30 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, held that the workmen concerned, would be paid a lump sum amount calculated at 85 days' salary, inclusive of all allowances, for the number of years each workman had actually worked irrespective of the days a workman may have put in in a year. The Supreme Court held that the calculation would be made on the basis of work during a calendar year and that the calendar year in which a workman may not have worked at all would be kept out of consideration while calculating the amount. In my view the index of compensation which has been applied by the

Supreme Court in its decision in Bajaj Auto Ltd., should be adopted in determining the compensation which would be paid to the workmen. The workmen who have not opted for voluntary retirement in the Crown Mills and Process House Division and who form the subject matter of the proceedings here, should, in my view, be directed to be paid a lump sum amount calculated at the rate of 85 days' salary inclusive of all allowances for the number of years each workman had actually worked, irrespective of the days a workman may have put in in a calendar year. This component would be on account of past services rendered by the workmen. In respect of the loss of future services, it would be appropriate to award compensation for a lump sum period of three years on the same basis, namely, 85 days for each calendar year so as to make up a total salary of 255 days of service. Finally in so far as those workmen who have opted for voluntary retirement under the VRS agreements dated 29th December 2002 are concerned, it is necessary that the management should meet and discharge its liability to those workers expeditiously. The VRS agreements, as this case would show, were an intrinsic step in the eventual

closing down of the undertakings of the Mumbai Mills. The workmen who opted for voluntary retirement are yet to receive the payment of their VRS dues. This Court in its jurisdiction under Article 226 has sufficient powers and indeed an obligation to issue directions to the management to satisfy the outstanding dues of those workers who opted for VRS on an expeditious basis, in accordance with final directions which the Court will issue.

43. The Petitions shall be disposed of in terms of the following directions:

(i) The award of the Industrial Tribunal dated 21st February 2004 shall stand quashed and set aside;

(ii) In lieu of reinstatement, the management is directed to pay: (a) earned wages to the workmen who have not opted for voluntary retirement until 1st April 2004, namely, the date on which the rehabilitation scheme came to be sanctioned by the BIFR; (b) compensation for past service rendered by the workmen quantified at 85 days' salary inclusive of all allowances for each year of

service during which the workmen had actually worked irrespective of days the workmen may have put in, in a calendar year; and (c) compensation on account of the loss of future services, for a lump sum period of three years on the same basis, namely, 85 days' for each calendar year so as to make a total salary of 255 days' of service; (d) the workmen will be entitled to gratuity in accordance with the payment of Gratuity Act, 1972.

(iii) The management is further directed to meet and discharge its liabilities to those workmen who have opted for voluntary retirement under the agreement dated 29th December 2002 with RMMS;

(iv) The aforesaid payments shall be made within a period of three months from today.

44. In the circumstances, there shall be no order as to costs.

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